IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL STAMP NO. 5950 OF 2007

in

L.C. SUIT NO. 4640 OF 1999

SMT. BHAGUBAI SULLALAL CHAUHAN
(SINCE DECEASED) & ORS. ..APPELLANTS

V/S

THE MUNICIPAL CORPORATION OF
GREATER BOMBAY & ORS. ..RESPONDENTS

MR. RAHUL RAO WITH MR.VIJAY PANDEY I/BY MR. ABDUL AZIZ KHAN FOR APPELLANT.
MRS. NISHA DABHADE FOR RESP. NO.1.
MRS. T.B. DALAL FOR RESP. NO.2.

CORAM : S.K. SHAH, J.
DATE : 5TH APRIL, 2007.

P.C.

1. The Appellant shall get this Appeal registered within a period of one week.

2. Heard learned counsel on both sides. This Appeal is filed against the Judgment and Order

passed by the Bombay City Civil Court dismissing the plaintiff's suit for injunction restraining the Municipal Corporation of Gr. Bombay from demolishing the structure.

3. The structure is G.I. shed, that is, described by the notice issued under section 351 of the BMC Act. The issues before the trial court were whether the plaintiff proves that the authorities allowed her to construct the suit structure and that the plaintiff is entitled to the suit premises. These issues were answered in the negative. All the documents produced before the trial court were considered.

4. Learned counsel for the Appellant relied on document at Ex.'B' produced in compilation, that is, the only letter issued by the Railway Authorities. This cannot be taken as evidence in favour of the Appellant. The letter is dated 22-9-1987. It is undisputed that in the year 1990 the structure was demolished and thereafter the G.I. shed was erected. There is no evidence to show that she has taken permission from the B.M.C.

for erecting the structure. The documents

produced show that they are of the year 1997 indicating that the structure is in existence since 1987. However, there is no documents produced by the Appellant to show that before erecting the structure permission was obtained from the B.M.C. Though the birth certificates are produced it shows the address of Murzaban Street. Therefore, they cannot be taken into consideration for proving the case of the Appellant. The election identity card do not support the case of the Appellant as they all show the address of Colaba.

5. Under the circumstances, I do not find any merit in the Appeal. The Appeal is therefore dismissed.

6. Learned counsel for the Appellant requests for stay of operation of the order. Learned counsels for the Respondent No. 1 and Respondent No. 2 object to the same. I do not find any necessity to stay the operation of the order. Therefore the request is rejected.

(S.K. SHAH, J.)